

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

U.S. Cotton, LLC.	)	
	)	
	)	
Plaintiff	)	Civil Action No. 3:18-cv-032
vs	)	
	)	
FILO AMERICA, INC.	)	
	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**  
**(Jury Trial Demanded)**

**COMES NOW** the Plaintiff, U.S. Cotton, LLC, by and through its legal counsel, Trego, Hines & Ladenheim, PLLC, and in support of its Complaint against Defendant, Filo America, Inc. does hereby allege and aver:

**Parties**

1. Plaintiff, U.S. Cotton, LLC (hereinafter, “US Cotton”) is a limited liability company organized under the laws of the State of Delaware with a principal place of business at 531 Cotton Blossom Circle, Gastonia, NC 28054.
2. Upon information and belief, Defendant Filo America, Inc. (hereinafter, “Filo America”) is a corporation organized under the laws of the State of California with a principal place of business at 6560 Bandini Blvd., Commerce, CA 90040.

**Jurisdiction and Venue**

3. This case involves a Declaratory Judgment of non-infringement under the Patent laws of the United States.

4. This Court has the authority to issue a Declaratory Judgment in a case of actual controversy within its jurisdiction pursuant to 28 U.S.C. §2201 and §2202.
5. The case of actual controversy in the instant matter arises under the provisions of the Patent Act, over which this Court has original jurisdiction pursuant to Title 35 U.S.C. and 28 U.S.C. §1331, §1338.
6. Upon information and belief, Defendant Filo America has sufficient contacts with this state and district such that this Court's exercise of personal jurisdiction over it would comport with traditional notions of fair play and substantial justice.
7. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

### **Facts**

8. US Cotton is in the business of, among other things, manufacturing and selling a wide range of cotton products for personal use including cotton balls, cotton rounds, cotton squares, and cotton swabs.
9. US Cotton sells its products under its own brand names and also provides its products to third parties for private label sale.
10. One of the products that US Cotton sells both under its own brand name and as a private label product is the cotton swab depicted below:



11. On or about December 19, 2017, Counsel for Filo America sent a cease and desist letter to US Cotton in which it claimed that the cotton swab product offering depicted in Paragraph 10 above constituted an infringement of United States Design Patent No. D779,654 (hereinafter, “the ‘654 Patent”) owned by Filo America. A true and correct copy of the December 19, 2017 letter is attached hereto as Exhibit 1. A true and correct copy of the ‘654 Patent is attached hereto as Exhibit 2.
12. The cease and desist letter contained a demand that US Cotton: 1) immediately discontinue use, importation, manufacture, sale and offer for sale of its swabs, 2) provide a full accounting for all grooved cotton swabs manufactured, imported or sold in the United States, and 3) pay damages for all such products. See Exhibit 1.
13. The cease and desist letter further indicated that if US Cotton did not accede to Filo America’s demands, then Filo America “will proceed with initiating

- litigation and seeking an accounting of lost profits, attorney fees, and treble damages.” See Exhibit 1.
14. Filo America’s allegations of infringement place a cloud over US Cotton’s product offerings, its business relationships with consumers, suppliers, and distributors, and its ability to conduct lawful business in the State of North Carolina.
15. By virtue of Filo America’s actions and overt threats of litigation, US Cotton has a reasonable apprehension that Filo America will initiate patent infringement litigation against it.

**COUNT ONE  
DECLARATION OF NON INFRINGEMENT  
OF U.S. PATENT DESIGN NO. D779,654**

16. Paragraphs 1 to 15 are incorporated by reference herein as though set forth in their entirety.
17. Filo America has accused the cotton swab product offered by US Cotton and depicted in Paragraph 10 above of infringing the ‘654 patent.
18. US Cotton denies that its cotton swab product depicted in Paragraph 10 above infringes the ‘654 patent.
19. There exists an actual controversy between the parties within the meaning 28 U.S.C §2201(a) as to whether an infringement exists.
20. US Cotton, pursuant to 28 U.S.C. §§2201 and 2202, seeks a Declaratory Judgment of non-infringement of the ‘654 patent, including a declaration that US Cotton’s importation, manufacture, distribution, use, sale, offer for sale and/or any other associated commercial activities relating to its cotton swab product

depicted in Paragraph 10 above does not infringe the ‘654 patent on the grounds that an ordinary observer, familiar with the prior art designs, would not be deceived into believing that the accused product is substantially the same as the patented design.

**COUNT TWO**  
**DECLARATION OF INVALIDITY**  
**OF U.S. PATENT DESIGN PATEN NO. D779,654**

21. Paragraphs 1 to 20 are incorporated by reference herein as though set forth in their entirety.
22. Filo America has accused the cotton swab product offered by US Cotton and depicted in Paragraph 10 above of infringing the claims of the ‘654 patent.
23. US Cotton denies that its cotton swab product depicted in Paragraph 10 above infringes the ‘654 patent and further contests the validity of the ‘654 Patent.
24. There exists an actual controversy between the parties within the meaning 28 U.S.C §2201(a) with respect to the validity of the ‘654 Patent.
25. US Cotton pursuant to 28 U.S.C. §§2201 and 2202, seeks a Declaratory Judgment of invalidity of the ‘654 patent under 35 U.S.C. §102 on the grounds that, *inter alia*, the claimed subject matter lacks the requisite novelty to satisfy the requirements of the Act, namely that “the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention.” 35 U.S.C. §102(a)(1).

### **Prayer for Relief**

**WHEREFORE**, US Cotton prays:

- A. That this Court declare that US Cotton has not infringed the '654 Patent and that US Cotton may import, manufacture, distribute, use, sell, offer for sale and engage in any other associated commercial activities relating to its cotton swab product depicted in Paragraph 10 above without interference from Filo America;
- B. That this Court declare that the '654 Patent is invalid under 35 U.S.C. 102(a)(1) on the grounds that the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention;
- C. That Filo America together with its respective agents, servants, employees, attorneys and all those in active concert or participation with it, be enjoined, pending trial, from instituting, prosecuting or threatening any infringement action against US Cotton relative to the '654 Patent,
- D. That Filo America together with its respective agents, servants, employees and attorneys and all those in active concert or participation with it, be enjoined from alleging, averring, or in any way communicating to any third party that US Cotton's cotton swab product depicted in Paragraph 10 above infringes the '654 Patent or any other proprietary right of Filo America;
- E. That US Cotton be awarded the costs and attorneys' fees it incurs in this action,

F. That this Court award any and all such other relief as it may deem just and equitable,

G. That all triable issues be brought before a jury.

This, the 19<sup>th</sup> day of January, 2018.

Respectfully Submitted

**TREGO, HINES & LADENHEIM, PLLC**

/s/Matthew Ladenheim  
Matthew J. Ladenheim  
(N.C. Bar No. 29309)

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